IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.04.2006

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

W.P.No.25573 of 2001

1. G. Chandru
2. K. Brammanayagam Pillai
3. V. Mahendran
4. G. Akilan
5. C. Vikraman
6. M. Richard Edward
7. S. Narayanasamy
8. R. Velu
9. R. Thilagar
10. R. Babu
11. K. Malayalathan
12. A. Alagumathan
13. P. Anbumani
14. P. Rajakumar
15. R. Ashok
16. J. Anbu
17. S. Santhar
18. T. Prasath
19. A. Jeikar A. Kattar
20. B. Muthukumaran
21. P. Rajaraman
22. T. Premnath
23. Seetharam Sriramulu Perla
24. Thirumal Marugan ... Petitioners

Vs

1. Union of India,
   rep. by its Secretary,
   Ministry of Surface Transport,
   New Delhi-110 001.

2. The Director General of Shipping,
   Ministry of Surface Transport,
   Government of India, Jahaz Bhavan,
   Walchand Hirachand Marg,
   Mumbai 400 038.

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3. The Director,
   Seamen Employment Office,
   Mercantile Marine Department,
   Anchorgate Building,
   Rajaji Salai, Chennai-600 001.

4. Indian National Shipping Owners
   Association, rep. by its
   Authorised Signatory
   No.22, Maker Tower-F,
   Cuffee Parade, Mumbai-400 005
   (R4 impleaded as per order
    dt. 13.9.2002 in WPMP.44320/2002 ... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of declaration as stated therein.

For Petitioners : Mr. K. Srinivasamurthy
For Respondents 1 to 3 : Mr. K.Sridhar, SCGC
R4 : Mr. O.Jovathi Sankar to
M/s.Ramasubramaniam Associates.

ORDER

The prayer in this writ petition is to issue a writ of declaration that the order No.1 of 2001 dated 27.03.2001 issued by the 2nd respondent on behalf of the 1st respondent is illegal and unconstitutional and consequently to direct the respondents to register the petitioners in the Seamen's Employment Office at Chennai and to further discharge their obligations under Part-VII of the Merchant Shipping Act, 1958 and the Merchant Shipping (Seamens Employment Officers) Rules, 1986.

2. The writ petition has been filed by the petitioners challenging the decision of the respondents in dispensing with the employment/registration of seamen through the Seamen's Employment Office at Chennai vide order No.1 of 2001, dated 27.03.2001, stating that it is in violation of the mandatory provisions of the Merchant Shipping Act, 1958 and the Merchant Shipping (Seamen Employment Office) Rules, 1986. As a result of the impugned order, the seamen are subject to many disadvantages due to the discretion vested with the shipping companies and in turn, the seamen are forced to face loss of livelihood and other hardships.

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3. It is also stated on behalf of the petitioners that the regulation of Seamens Employment came about as a result of deliberations of the concerned parties at the international level in order to avoid malpractices in the employment of seamen and to protect them from the exploitation by the shipping companies. The problems faced by the seamen were taken note of by the International Labour Conference in 1920. A high level committee was constituted in 1921 to examine the problems in the matter of recruitment of seamen and to suggest regulatory measures. After a detailed survey, the committee recommended curtailment of the privileges of licenced brokers and the establishment of the Special Employment Offices. In 1931, the Royal Commission which went into the conditions of labour in India, recommended the withdrawal of the licence of all the brokers, due to rampant malpractice and harassment of the seamen. Thereafter, they were eliminated from the recruitment procedure for employment of seamen.

4. It is further stated that in 1947, the Government of India again convened a Tripartite Maritime Labour Conference. The consenses that emerged was that there should be Governmental action to set up employment offices for supply of maritime labour on the principle of rotation. In October 1953, the International Labour Organisation convened the Asian Maritime Conference in Sri Lanka, which made certain recommendations. Accepting the recommendations in 1954, the Government of India established the Seamens Employment Office at Bombay and one at Calcutta in 1955. Thereafter, Merchant Shipping Act, 1958, was enacted. Section 12 of the Act provided for the establishment of Seamen Employment Offices at every port in India by notification in the Official Gazette. Section 95 of the Act provided for the business of Seamen Employment Offices and mandates that it shall be the business of the Seamen Employment Office to regulate and control the supply and recruitment of persons for employment as seamen for ships.

5. Further Section 95(3) of the Act authorised the Central Government to make rules for the purpose of the functioning of the Seamen Employment Offices and for other incidental matters relating thereto. By notification dated 23.04.1993, published in the Official Gazette of India in exercise of powers conferred under Section 12 of the Merchant Shipping Act, 1958, the Central Government established Seamens Employment Office at Chennai. Recruitment and engagement of seamen was, thereafter, made only through that office. Further, in recent times, the respondents have made the Seamen Employment Office almost defunct and have restricted its work to engagement of seamen who were already registered. Simultaneously, they have permitted engagement of seamen directly by the shipping companies.

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6. The Director General's order No.1 of 2001 dated 27.03.2001, purports to be an order under Section 456(1) of the Merchant Shipping Act, 1958. The order said that in consonance with the policy of liberalisation, the recruitment of registration and employment of seamen through Seamen Employment Offices, under the provisions of sections 95 and 96 of the Act, are to be dispensed with. The order exempted seamen from going through the employment offices.

7. According to the petitioners, the decision of the respondents gives a complete go by to the provisions of Sections 95 and 96 and several other provisions governing the recruitment, qualifications, discharge, disciplinary and other matters regarding employment of seamen. Therefore, challenging the order No.1 of 2001, dated 27.03.2001, issued by the 2nd respondent, the present writ petition has been filed.

8. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents.

9. At this stage of the hearing of the writ petition, it is brought to the notice of this Court that in para 23 of the counter affidavit, filed by the 3rd respondent, it is stated that the impugned notification is not in operation any more, in view of the amendment made in Section 95 of the Merchant Shipping Act, 1958, in the year 2002, which was notified in the Official Gazette on 01.02.2003, by sub-section (2) of Section 1 of the Merchant Shipping Amendment Act, 2002.

10. In view of the submission made by the 3rd respondent, the petitioners seek liberty to challenge the amendment brought in as stated above. Therefore, the writ petition is disposed of granting liberty to the petitioners to challenge the said amendment, if so advised. No costs.

ap

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary,
   Union of India,
   Ministry of Surface Transport, New Delhi-110 001.

2. The Director General of Shipping,
   Ministry of Surface Transport,
   Government of India, Jahaz Bhavan,
   Walchand Hirachand Marg, Mumbai 400 038.

3. The Director,
   Seamen Employment Office,
   Mercantile Marine Department,
   Anchorgate Building,
   Rajaji Salai, Chennai-600 001.

4. The Authorised Signatory,
   Indian National Shipping Owners
   Association,
   No.22, Maker Tower-F,
   Cuffee Parade, Mumbai-400 005

1 cc to Mr.Row & Reddy, Advocate, SR.17733
1 cc to Mr.K.Sridhar, SCGC., SR.18184

mj (co)

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